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ALEXANDER L. STEVAS,
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No. 82-602

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ALFRED M. LAWSON,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals for the Fourth Circuit rendered a decision in conflict with the decisions of other federal courts of appeals and contrary to the intentions of Congress when it ruled that in the prosecution of a pharmacist for illegally dispensing drugs pursuant to fraudulent prescriptions (21 U.S.C. 841 (a)) the government need not prove that the "prescriptions" were illegitimate.

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v.

UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI TO
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FOR THE FOURTH CIRCUIT

Petitioner, Alfred M. Lawson, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit, entered in this cause on June 24, 1982.

OPINIONS BELOW

The June 24, 1982 opinion of the United States Court of Appeals for the Fourth Circuit, whose judgment is herein sought to be reviewed, is published in volume 682 of Federal Reporter 2d Series, at pages 480 etc. and is reprinted in Appendix A to this Petition.

The United States District Court for the District of Maryland, which was the trial court in this matter, issued no reported opinion.

JURISDICTION

The decision of the United States Court of Appeals for the Fourth Circuit was made on June 24, 1982, and a copy thereof is appended to this Petition in Appendix A.

Petitioner's petition for rehearing and suggestion for rehearing en banc was denied by the United States Court of Appeals for the Fourth Circuit on August 6, 1982.

This Court has jurisdiction to review the judgment rendered below pursuant to the provisions of Title 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

This case involves the statutory provisions cited below:

Harrison Anti-Narcotic Act (in relevant part), 26 U.S.C. § 4705 (repealed by Pub. L. 91-513, § 1101, 84 Stat. 1292 (1970)).

> It shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid drugs, shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the state, territorial, district, municipal, and insular officials named in section five of this act. Every person who shall give an order as herein provided to any other person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue, and in case of the acceptance of such order, shall preserve such duplicate for a period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned. Nothing contained in this section shall apply-

"(a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon regularly registered under this act in the course of his professional practice only: Provided, that such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date and the *name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this act.

"(b) To the sale, dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription, issued by a physician, dentist, or veterinary surgeon registered under this act: Provided, however, that such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same: And provided further, that such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees and officials hereinbefore mentioned.

21 U.S.C. § 829(a)

(a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance

in schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, may be dispensed without the written prescription of a practitioner, except that in emergency situations, as prescribed by the Secretary by regulation after consultation with the Attorney General, such drug may be dispensed upon oral prescription in accordance with section 503(b) of that Act. Prescriptions shall be retained in conformity with the requirements of section 827 of this title. No prescription for a controlled substance in schedule II may be refilled.

21 U.S.C. 841(a)

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally -

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to create, distribute or dispense, a counterfeit substance.

21 C.F.R. § 1306.04(a)

(a) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the

usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

STATEMENT OF THE CASE

Proceedings Below. Alfred Lawson was indicted in the United States District Court for the District of Maryland in case number CR-M-80-0391 on October 28, 1980 for violations of 21 U.S.C. 841(a), 846 and 21 C.F.R. § 1306.04. A jury returned a verdict finding Lawson guilty of count one (conspiracy), counts two through eight (distribution of preludin and tuinal from the Fenwick Pharmacy between October of 1976 and April, 1977) and counts nine through twenty-two (distribution of dilaudid from Lawson and Son Pharmacy between April, 1978 and February, 1979). He was acquitted on counts nine, ten and eleven (distribution of dilaudid from Hyattsville between January, 1978 and March, 1978).

His co-defendant, Thomas Lane, another pharmacist, was found guilty of conspiracy (count one) and fourteen counts (nine through twenty-

two) of distribution of dilaudid. Lane was found dead several days after the verdict was entered. On that basis, the verdict against him was set aside and the indictment dismissed.

On February 2nd, Dr. Lawson's motion for a new trial and motion for judgment of acquittal was denied. Notice of Appeal was timely filed.

Dr. Lawson was thereafter sentenced to one hundred and seventy-nine days incarceration with the balance of the five-year sentence suspended. A five-year probationary term was imposed to begin after the one hundred and seventy-nine day term.

Dr. Lawson's appeal to the United States Court of Appeals for the Fourth Circuit was decided on June 24, 1982. That court affirmed his conviction, and subsequently denied Petitioner's request

for rehearing.

Statement of Facts. This case concerns three main parties: two pharmacists and one non-pharmacist. Alfred Lawson, your Petitioner, was the registered pharmacist in charge of the Fenwick Pharmacy at Ocean City, Maryland. Thomas Lane was the registered pharmacist in charge of Lawson and Son Pharmacy in Hyattsville, Maryland near Washington, D.C. Dr. Lawson was the managing pharmacist at Lawson and Son until 1973 when he moved to the Fenwick Pharmacy. From 1973 until after his trial in 1981 Dr. Lawson continued to fill in occasionally (about six times annually) as a relief pharmacist at the Hyattsville pharmacy as well as manage the Fenwick Pharmacy.

This case concerns two sets of prescriptions: one set was for Schedule II drugs preludin and tuinal, purportedly written by Dr. Lynn Possinger of Phila-

delphia, Pennsylvania, filled by Dr. Lawson or his assistant at the Fenwick Pharmacy in 1976 and 1977; the other was for Schedule II drug dilaudid, purportedly written by Dr. Marshall Nickerson of Washington, D.C., filled by Thomas Lane and his assistants at the Hyattsville pharmacy during 1978 and 1979. Both sets of prescriptions were presented at the respective pharmacies by the third main figure, Ronald Smith.

There was no question at trial that the purported prescriptions had been filled and that the drugs were dispensed. The crucial issue as to both sets of prescriptions was whether either of the pharmacists possessed guilty knowledge when they filled these prescriptions, i.e., whether they actually knew or had reason to know that the "prescriptions" Ronald Smith presented to them were illegitimate.

It is this inquiry and the underlying inquiry regarding the circumstances under which the prescriptions were written, that form the focus of this petition.

REASONS FOR ALLOWING THE WRIT

This petition for writ of certiorari should be granted to prevent a diversity of law as to the necessity of proving the illegitimacy of prescriptions in prosecutions of pharmacists under 21 U.S.C. § 841(a) for illegally dispensing drugs.

In regulating the use of various narcotics, Congress has traditionally carved out certain exceptions to the general rule prohibiting trading and dealing in dangerous drugs. The Harrison Anti-Narcotic Act, 26 U.S.C. § 4701 et seq. (repealed by Pub. L. 91-513, § 1101, 84 Stat. 1292 (1970)), made it unlawful to sell certain narcotics without a proper government form. Id. § 4705. That prohibition did not apply, however, to physicians who dispensed drugs to patients in the course of their professional practice or to pharmacists who dispensed drugs by filling a doctor's written prescription. Id. If prescrip-

tions were not written in the course of their professional practice, doctors bore the same guilt as any other violator. However, a druggist shared no culpability for filling prescriptions written by doctors outside their professional practices, so long as the prescriptions were in proper form. United States v. Fleming, 251 F.932 (W. D. Pa. 1918); Doremus v. United States, 262 F. 849 (5th Cir. 1920); United States v. Eckert, 7 F.2d 257 (8th Cir. 1925); contra, United States v. Curtis, 229 F. 288 (N.D.N.Y. 1916). In the absence of an allegation that the doctor and the pharmacy were conspiring to break the law, the pharmacist's mens rea was not in issue. He was fully protected if he could produce a doctor's prescription, legitimate or not, for the drugs he dispensed and courts were forbidden from considering what went through the pharmacist's mind when he filled a prescription which

appeared questionable. United States v. Fleming, 251 F. 932, 934-935 (W. D. Pa. 1918).

In 1970 Congress repealed the Harrison Anti-Narcotic Act and enacted the Comprehensive Drug Abuse Prevention and Control Act, Pub. L. No. 91-513, § 1101, 84 Stat. 1292(1970)(codified in 21 U.S.C. § 801 et seq.). This new law was created to strengthen the existing laws, United States v. Steinberg, 525 F.2d 1126 (2d Cir. 1975) cert. denied, 425 U.S. 971 (1976), and to continue to control traffic and abuse of certain drugs. United States v. Greenberg, 335 F. Supp. 364 (D. C. Pa. 1971). The newer law is similar to the Harrison Anti-Narcotic Act. It declares a general rule making it unlawful to distribute or possess certain drugs, and then creating an exception covering the dispensation of drugs by

physicians and pharmacists pursuant to prescriptions. See, 21 U.S.C. § 829(a). The regulations promulgated to supplement and support the law make it clear, however, that pharmacists are no longer "off the hook" when they automatically fill prescriptions which doctors write outside their proper professional practice.

> (a) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner,but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

21 C.F.R. § 1306.04 [Emphasis added]. Clearly, then, even though they may not know one another, a physician and a pharma-

cist now share criminal responsibility when a "purported prescription" is filled, i.e., one not "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." Id.

Under this new concept of conferring on pharmacists additional duties in aid of curbing drug abuse through prescription fraud, courts must ask a two-part question: was the prescription filled by the pharmacist a legitimate one and, if so, did the pharmacist know or have reason to know that it was not legitimate? If the first part of the question is answered in the affirmative, there is no reason to consider the second. If the prescription is good, there is no crime in filling it, regardless of how unusual or suspect it may be. The Fifth Circuit recently confirmed that this is the law,

stating:

> It is unlawful to dispense a controlled substance except as authorized by law. 21 U.S.C. § 841(a)(1). Pharmacists are authorized to dispense controlled substances pursuant to prescription, see 21 U.S.C. § 829, but 21 C.F.R. § 1306.04(a) limits that authorization. The prescription must be issued for a legitimate medical purpose by an individual physician acting in the usual course of his professional practice. While the responsibility for the proper prescribing and dispensing of controlled substances is upon the physician, the regulation imposes a "corresponding responsibility" upon the pharmacist who fills the prescription. Thus, the regulation provides that, if an order purporting to be a prescription is not a prescription despite its appearance and, if the pharmacist knows that it was not issued in the usual course of professional treatment, both the person issuing the ostensible prescription and the person who knowingly fills it shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances. 21 C.F.R. § 1306.04(a).

United States v. Irwin, 661 F.2d 1063, 1069 (5th Cir. 1981). The Fifth Circuit case of United States v. Hayes, 595 F.2d 258 (5th Cir.) cert. denied, 444 U.S. 866 (1979) states accordingly: "What is required of . . . [the pharmacist] is the responsibility not to fill an order that

purports to be a prescription but is not a prescription within the meaning of the statute because he knows that the issuing practitioner issued it outside the scope of medical practice." Id. at 261 (footnote omitted).

The opinion of the federal appellate court in Dr. Lawson's case is to the contrary.

In the instant case against Dr. Lawson, the trial judge recognized the necessity of proof by the government that the prescriptions filled by Dr. Lawson were bogus, although his instruction to the jury on this point was not very clear. The judge told the jury that it should determine whether the defendant pharmacists "knowingly filled the prescriptions other than for a legitimate medical purpose and other than in the usual course of a doctor's medical practice."

Dr. Lawson appealed his conviction to the United States Court of Appeals for the Fourth Circuit, arguing that the trial court erred in allowing a pharmacist to testify as an expert not only on the second issue of whether a pharmacist presented with certain prescriptions would have reason to know they may be illegitimate, but also on the threshhold issue of legitimacy of the prescriptions. That court addressed the appellate argument by stating that "[a]dmittedly, the only issue is whether the pharmacist knew the prescriptions were not genuine," Appendix at A-10, thereby denying that any such threshhold issue exists. In so doing, that court not only contravened established law from other circuits on the requirements of proof in prosecutions of pharmacists under 21 U.S.C. 841(a), and ignored the plain meaning of the statutes upon which

the case is based, but also allowed to stand a conviction in the trial court which was supported, in part, by unfounded and improperly admitted "expert" testimony. By allowing that conviction to stand the appellate court has sanctioned the trial court's departure from the accepted and usual course of judicial proceedings.

Clearly, then, if the appellate opinion remains unaddressed by this court, authority will exist in the Fourth Circuit which will be contrary to that of other circuits and, more important, contrary to the declarations of Congress.

CONCLUSION

For the reasons set forth above, Petitioner respectfully prays that a writ of certiorari issue to review and correct the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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APPENDIX A

OPINION SOUGHT TO BE REVIEWED

UNITED STATES OF AMERICA,
Appellee,

v,

ALFRED M. LAWSON,
Appellant.

No. 81-5103

United States Court of Appeals,
Fourth Circuit

June 24, 1982

682 F. 2d 480 (4th Cir. 1982)
Appeal from the United States District Court for the District of Maryland, at Baltimore.

Before BUTZNER, RUSSELL and HALL, Circuit Judges.

HALL, Circuit Judge.

Lawson, a registered pharmacist, was convicted on nineteen counts of violating the federal narcotics laws, 21 U.S.C. §§ 841(a)(1) and 846, including one count of conspiracy to distribute Schedule II substances and eighteen counts of distribution of Schedule II drugs on

the basis of prescriptions which he knew were not issued for a legitimate medical purpose. He appeals, alleging that there was insufficient evidence to convict him on the distribution counts or to connect the various distribution charges into a single conspiracy. A review of the evidence reveals that there is no merit to this appeal and accordingly, we affirm.

I.

In 1976, Ronald Smith, an obese man, began an illicit prescription arrangement with Dr. Possinger, a Philadelphia osteopath who ran a "diet clinic." Possinger would make records for fictitious patients and sell their "prescriptions" to Smith. The prescriptions were for preludin, a stimulant used for weight control, and tuinal, a sedative hypnotic also used in diet programs to counteract

the effects of preludin.[1/] All the prescriptions were alike, and Possinger would sell Smith as many as fifteen per day for $10-15 a piece. Smith's only chore was to find a pharmacist to fill the prescriptions.

Lawson was part owner of two pharmacies, one in Ocean City, Maryland, a resort community a few hours from Philadelphia, and the other in Hyattsville, Maryland, a suburb of Washington, D.C. Lawson himself worked full time at the Ocean City pharmacy, filling in one weekend a month for Thomas Lane, the manager of the Hyattsville store.

Late in 1976, Smith started presenting his bogus prescriptions at Lawson's Ocean City pharmacy. At first,

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[1/] Both of these drugs are Schdule II controlled substances. 21 U.S.C. § 812. Drug addicts take them simultaneously to achieve a "paradoxical high."

Lawson called Dr. Possinger a few times to verify them. On a couple of occasions, Lawson took the additional precaution of contacting the federal drug task force in Philadelphia to see if Possinger himself was legitimate. The drug enforcement agents told Lawson that Possinger had a poor reputation and Lawson should be guided by his conscience in deciding whether or not to fill the prescriptions.[2/]

Lawson decided to fill the orders. Because the pharmacy did not stock these drugs in quantity, Lawson would order large amounts from the wholesalers and fill the prescriptions when the drugs

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[2/] Neither Lawson nor the agents were completely candid in their communications. Lawson did not make it clear that Smith was bringing in prescriptions for thirty to fifty of Dr. Possinger's "patients" at a time. On the agents' parts, they did not inform Lawson that Possinger was under investigation and had been convicted on state drug violations the previous spring.

arrived; Smith would return to pick them up.

The volume of drugs Lawson was ordering prompted the Drug Enforcement Administration to investigate.[3/] When the investigators were questioning Lawson, he indicated that all of Possinger's patients were coming to Ocean City to get their diet pills; he said nothing about Possinger's "diet clinic" or Smith. He also maintained at that time that he had called Possinger to verify every new patient, although in fact his telephone records reflected only four calls to Philadelphia.

In all, over a five-month period, Smith brought 495 preludin prescriptions and 250 tuinal prescriptions to the Ocean City pharmacy. After receiving two grand jury subpoenas for Possinger's prescriptions, Lawson stopped filling them.

[3/] Pharmacies must order Schedule II drugs using special three-part forms. One copy is sent to the Drug Enforcement Administration so it can monitor large purchases of drugs.

In late 1977, Smith reappeared, this time at the Hyattsville pharmacy with prescriptions for dilaudid, a Schedule II controlled drug used for severe pain. These prescriptions were from Dr. Nickerson, a Washington, D.C. physician, issued to various fictitious patients. Because Lawson was at the Hyattsville pharmacy only once a month, Lane, the pharmacist and manager of the Hyattsville store, filled the majority of these prescriptions. However, Lawson filled a number of the dilaudid prescriptions at the Ocean City pharmacy.

As before, Smith would drop off the prescriptions, the dilaudid would be ordered from the wholesaler, frequently by Lawson, and Smith would return to pick up the drugs when they arrived. There was often a substantial time lapse before the prescriptions could be filled.

On one occasion, Lawson was in the Hyattsville store when Smith came in and they greeted each other. Smith left without presenting any prescriptions or picking up any drugs and Lawson did not caution Lane or the other pharmacists about him. On another occasion, Lawson came into the Hyattsville store and handed Lane a bulging envelope like the ones he normally delivered prescriptions in, saying he had had a visit from "Ron."

Smith was able to have his dilaudid prescriptions filled at the Hyattsville pharmacy through February of 1979, when the police closed in. In June, 1980, Lawson, Lane and Smith were each indicted on one count of conspiracy to distribute Schedule II substances and twenty-one counts of distributing controlled substances, including seven counts of distributing preludin and tuinal out of the Ocean City pharmacy and fourteen counts of dis-

tributing dilaudid out of the Hyattsville pharmacy. Lawson was convicted on all but three of the dilaudid counts.[4/]

II.

Lawson challenges the sufficiency of the evidence to support the convictions on the distribution counts. In particular, he claims, the government failed to prove that he knew the prescriptions were not legitimate.

Controlled substances may be dispensed only when prescribed by a licensed practitioner. 21 U.S.C. § 829. Furthermore,

> [a]n order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of . . . (21 U.S.C. § 829) and the person knowingly filling such a purported prescription . . . shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances. 21 C.F.R. § 1306.04(a).

[4/] Lane was convicted on the conspiracy and dilaudid counts. He died several days after the verdict was entered.

The question, then, in any case where a pharmacist is charged with illegal distribution of controlled substances, is whether he knew that the purported prescription was not issued for a legitimate medical purpose or in the usual course of medical practice. United States v. Hayes, 595 F.2d 258, 260 (5th Cir.) cert. denied 444 U.S. 866 (1979). The key element of knowledge may be shown by proof that the defendant deliberately closed his eyes to the true nature of the prescription. United States v. Seelig, 622 F.2d 207, 213 (6th Cir. 1980) cert. denied 449 U.S. 869 (1981); United States v. Kershman, 555 F.2d 198, 200 (8th Cir.) cert. denied, 434 U.S. 892 (1977). There is abundant evidence in this case from which the jury could conclude that Lawson knew the prescriptions Smith presented were

bogus.[5/]

When a pharmacist is faced with a large number of prescriptions all written by one doctor and all presented by one person, he has strong evidence that the prescriptions are not legitimate. United States v. Hayes, supra. Further, as the government's expert, Donald Fedder, a professor of pharmacy at the University of Maryland testified, the uniform dosages and quantities belied any conclusion that the prescriptions in this case were ordered for individual patients.[6/]

There are other factors which demon-

[5/] The jury's verdict must be affirmed if there is sufficient evidence, viewed in the light most favorable to the government, from which any rational jury could have found guilt beyond a reasonable doubt. Glasser v. United States, 315 U.S. 60, 80 (1942); United States v. Steed, 674 F.2d 284, 286 (4th Cir. 1982).

[6/] Lawson argues that Professor Fedder should not have been qualified to testify about the medical legitimacy of the prescriptions because the pharmacists, and not the doctors, were on trial. Admittedly, the only issue is whether the pharmacist knew the prescriptions were not genuine.

strate Lawson's knowledge. Tuinal and preludin are prescribed together in a diet program, so it is highly suspect that none of Dr. Possinger's "patients" received both drugs. The dilaudid prescriptions were even more questionable. While tuinal and preludin could arguably be used for a number of patients in a diet clinic, dilaudid is prescribed only for persons experiencing excruciating pain. If a doctor were operating a clinic for terminal cancer patients, perhaps he would prescribe dilaudid regularly. However, if that were the case, the patients would need their prescriptions filled immediately; they would be unable to wait days, weeks, or

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(footnote 6, continued)

However, contrary to the defendant's arguments, Dr. Fedder's testimony did not stray from that issue. Although Professor Fedder was asked if, in his opinion, the prescriptions were issued for a legitimate medical purpose, he answered from a pharmacist's perspective, pointing to the flags of illegitimacy (such as the uniformity of the prescriptions) which should signal a pharmacist that the prescriptions were not legitimate.

even months while the pharmacy ordered the drugs from a wholesaler as was done here. Further, even assuming that Lawson would have seen nothing amiss in the dilaudid prescriptions he filled himself, he should have been alerted by the surge in the quantity of dilaudid he was ordering from the wholesaler for the Hyattsville pharmacy.

There is other evidence from which a jury could infer Lawson's actual knowledge that the prescriptions were not valid. Having verified the first few batches of Possinger prescriptions, he stopped questioning their legitimacy. When the inspectors asked him about the preludin and tuinal prescriptions, he lied, saying that all Possinger's patients were coming to Ocean City to fill their prescriptions. In addition, the grand jury's investigation into the Possinger prescriptions alerted Lawson to the likelihood that Smith might be passing fake prescriptions.

Yet, he showed no alarm when he saw Smith in the Hyattsville pharmacy a year later; he never asked why Smith, whom he supposedly knew as a Philadelphia resident, would be browsing in a Washington, D.C. area pharmacy; and he never conveyed any concern to the pharmacists at the Hyattsville store. Later, Lawson came to the Hyattsville store with a bulging envelope, which was markedly similar to ones he generally used to carry prescriptions, and handed it to Lane, saying that he had been visited by "Ron," an obvious reference to Ronald Smith.

In sum, Lawson willingly ignored every signal that he should question the volume of controlled drugs being dispensed from his pharmacies. Moreover, there is the evidence that, beyond suspicion, he knew the prescriptions were not legitimate.

III.

Lawson also argues that the government failed to prove a single, overall conspiracy as was charged. Rather, he contends, the government was permitted to prove a series of preludin-tuinal prescription charges separately from a series of dilaudid charges, only to bring them all together at the end under a single conspiracy umbrella.

The issue became more complicated when the judge originally instructed the jury that it could find a single conspiracy even if one of the defendants had conspired separately with Smith or the doctors. The judge struck that instruction sua sponte[7/] and told the jury instead that they must find a single conspiracy as charged. Des-

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[7/]It is worthy of note that the defendants did not object to the instruction.

pite any interim confusion, the trial judge left the jury with a clear instruction that to convict they must find a single conspiracy.

Lawson contends, nonetheless, that the verdict on the conspiracy count is invalid because he was not convicted on all of the substantive counts. Lawson was acquitted on three of the dilaudid counts, but that does not prove his point. First, it is axiomatic that consistency of verdicts is not required. Hamling v. United States, 418 U.S. 87, 101 (1974). Moreover, Lawson was convicted on the majority of substantive counts, including the dilaudid counts; thus, he and Smith could be viewed as the principals in an ongoing conspiracy involving first the preludin and tuinal prescriptions filled at the Ocean City pharmacy and later the dilaudid prescriptions filled at the Hyatts-

ville pharmacy.[8/]

IV.

We have considered the other issues Lawson raises on this appeal and find them to be without merit. Accordingly, we affirm the conviction.

A F F I R M E D.

[8/] See, e.g., United States v. Diana, 605 F.2d 1307 (4th Cir. 1979), cert. denied 444 U.S. 1102 (1980); United States v. Calabro, 467 F.2d 973 (2d Cir. 1972) cert. denied Tortorello v. United States, 410 U.S. 926 (1973). Compare United States v. Coward, 630 F.2d 229 (4th Cir. 1980), on rehearing, 669 F.2d 180 (4th Cir. 1982), (two pharmacists conspired with the same doctor, but were otherwise totally unconnected).

CERTIFICATE OF SERVICE

I, Bruce C. Bereano, a member of the Bar of the Supreme Court of the United States and counsel of record for Alfred M. Lawson, movant herein, hereby certify that on the 5th day of October, 1982, pursuant to Rule 28.3, Rules of the Supreme Court, I served three copies of the foregoing Petition for Writ of Certiorari on each of the parties herein, as follows:

On the United States of America, by depositing such copies in the United States Post Office, Annapolis, Maryland with first class postage prepaid, properly addressed to the post office address of the United States Attorney, J. Frederick Motz, David B. Irwin, Esquire, Assistant United States Attorney and Robert N. McDonald, Esquire, Assistant United States Attorney at the Eighth Floor, United States Courthouse, 101 West Lombard Street, Baltimore,

Maryland 21201.

On the Solicitor General of the United States, pursuant to Rule 28.4(a), by depositing such copies in the United States Post Office, Annapolis, Maryland with first class postage prepaid, properly addressed to the post office address of the Solicitor General, Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530.

All parties required to be served have been served.

Dated October 5, 1982.

BRUCE C. BEREANO
COUNSEL OF RECORD